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09/216,545	12/18/1998	THOMAS HAROLD ROESSLER	14.541	9533
23556	7590	10/24/2006	EXAMINER	
KIMBERLY-CLARK WORLDWIDE, INC. 401 NORTH LAKE STREET NEENAH, WI 54956			ART UNIT	PAPER NUMBER

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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 09/216,545
Filing Date: December 18, 1998
Appellant(s): ROESSLER ET AL.

David J. Klann
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed 6-26-06 appealing from the Office action mailed 9-19-05.

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

(4) Status of Amendments After Final

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

2 308 290	SCA MOLNLYCKE AB	06-1997
	(Great Britain)	
95/27463	MOLNLYCKE AB (PCT)	10-1995

5,685,873

BRUEMMER

11-1997

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Ground 1:

Appellant's statement at page 4, fifth line from the bottom is interpreted to mean that the claims stand or fall together for purposes of each ground of rejection involving more than one claim. As set forth in MPEP 1205.02, when multiple claims subject to the same ground of rejection are argued as a group by appellant, the Board may select a single claim from the group of claims that are argued together to decide the appeal with respect to the group of claims as to the ground of rejection on the basis of the selected claim alone. Accordingly, the discussion infra will be directed primarily to the broadest of claims 40-47 and 49, i.e. claim 40.

Claims 40-47 and 49 are rejected under 35 U.S.C. 103(a) as being unpatentable over SCA '290 in view of Larsson PCT '463.

With regard to claims 40-46: See SCA '290 at Figures, especially 4-7; page 9, lines 17-20; page 5, lines 9-11, the absorbent chassis; elements 28 and 4, page 7, lines 18-24, page 9, lines 3-7, page 11, lines 11-15, the elastic back panel 13; page 5, line 19-page 6, line 10, page 7, lines 6-7, page 9, lines 3-7, page 11, lines 11-15, elastic front panel 8 and separate 5 or unitary engaging portions; page 10, lines 10-11, the seam 17. The SCA device, includes all the claimed structure except for the releasable bond as set forth in subsection e) of claim 40 and the specifics thereof in the dependent claim 46. However, Larsson teaches a similar article which also

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includes a releasable bond in addition to a refastenable joint to improve reliability of maintaining the article in a prefastened condition particularly when it is being used, i.e. pulled on or off the hips, i.e. to maintain the shape of and put on like a pair of ordinary underpants, see, e.g., Figures, page 2, lines 1-24, page 5, line 25-page 7, line 10, page 7, lines 21-24, page 8, lines 21-23, e.g. "at least one point bond" as claimed, page 9, lines 10-12. To employ a releasable bond as taught by Larsson on the SCA device would be obvious to one of ordinary skill in the art in view of the recognition that such would improve the reliability of maintaining the prefastened condition during use and the desirability of such by SCA, attention is reinvited to page 9, lines 17-20 of SCA. With regard to claims 47 and 49, they are product by process claims. In accord with MPEP 2113, even if the product of the prior art combination is made by a different process, since the end product is obviously the same as the end product of claim 47, i.e. the end product is a weld whether ultrasonically formed or not, and claim 49, the claim does not distinguish over the prior art.

Ground 2:

Claim 48 is rejected under 35 U.S.C. 103(a) as being unpatentable over SCA '290 and Larsson as applied to claim 40 above, and further in view of Bruemmer '873.

SCA and Larsson teach all the claimed structure except for a releasable bond of a specific peel strength, i.e. no more than about 1500 grams, i.e. or in other words no more than the maximum force allowing opening or unfastening of the bond. However, Bruemmer at col. 4, line 55-col. 5, line 4 teaches fasteners having a maximum unfastening force of no more than about 1500 grams so as to permit an adult to open such fastener but to prevent a child from doing

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so. See also page 1, lines 10 et seq of SCA, i.e. use on babies or children and by adults or use on and by adults, and cited portions of Larsson supra, i.e. releasable bonds to prevent unintended opening. Therefore, to employ a releasable bond defining a peel strength of no more than 1500 grams on the SCA device would be obvious to one of ordinary skill in the art in view of the recognition that such would allow intended opening by adults and the desirability of such by the prior art.

(10) Response to Argument

Appellant's discussion of case law on pages 4-5 is noted.

Ground 1:

Appellant's statement at page 4, fifth line from the bottom is interpreted to mean that the claims stand or fall together for purposes of each ground of rejection involving more than one claim. As set forth in MPEP 1205.02, when multiple claims subject to the same ground of rejection are argued as a group by appellant, the Board may select a single claim from the group of claims that are argued together to decide the appeal with respect to the group of claims as to the ground of rejection on the basis of the selected claim alone. Accordingly, the discussion infra will be directed primarily to the broadest of claims 40-47 and 49, i.e. claim 40.

Appellant's arguments on pages 6-8 with regard to claim 4 which are substantially the same as those set forth in Appellant's 5-27-04 response have been reconsidered but are deemed not persuasive for the same reasons as those set forth in the FINAL, i.e. Appellant's argument is that the strip 8, if elastic, is laid flat over perforated line 6 and thus would not extend laterally from the side edges. However, as clearly shown in the Figures and described textually, the

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surplus of material 9, or, in the alternative, the laid flat material in the same region, allow separation of the chassis at 6 but the strips 8 and 13 remain intact so that a free zone 15, which is laterally outward of the side edges of such chassis, is created. Seam(s) between strips 8 and 13 are created in such zone 15 and then the zone is severed at 16 which is also laterally outward of the side edges, see especially Figures 4-7. Applicant should also note page 9, lines 3-7, i.e. laid flat elastic material is also present with the surplus 9 and is severed at line 16 beyond line 6 after separation at line 6 of the chassis.

Therefore the rejection of claims 40-47 and 49 is deemed proper and maintained.

Ground 2:

Appellant's arguments on pages 8-9 have been considered. It is Appellant's argument that since SCA and Larson do not teach the invention of claim 40 and the Bruemmer reference now in combination with such references fails to correct the deficiencies of such references, the invention of dependent claim 48 is also not taught. However see the discussion of Ground 1 *supra*.

The rejection of claim 48 is deemed proper and maintained.

(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

Karin M. Reichle



Conferees:

Tanya Zalukaeva



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